**THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA**

**WRIT PETITION No. 21816 of 1998**

**Dated: 03.07.2007.**

**Between:**

Chelikani Surendranath, S/o.Malla Rao and others.

... **PETITIONERS**

**And:**

Government of Andhra Pradesh, rep. by
its Secretary, Revenue Department,
Department, Secretariat, Hyderabad and others.

....**RESPONDENTS**

**THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA**

**WRIT PETITION No. 21816 of 1998**

**ORDER:**

The petitioners filed the present writ petition seeking a writ of Mandamus declaring the action of the respondents in dispossessing them from out of their lands in Survey Nos.36/36, 36/33, 36/38, 36/10, 36/37, 45/1, 36/4 and 36/35 admeasuring Ac.2.13 gnts, Ac.1-14 gnts, Ac.1.13 gnts, Ac.5.00 gnts, Ac.5.00 gnts., Ac.1.00 gnts., Ac.2.00 gnts. and Ac.2.00 gnts., situate in Patwarigudem village, Dhammapeta Mandal, Khammam district as illegal, arbitrary and consequently put the petitioners back in possession of their lands.

(2) According to the petitioners, the above lands were in their possession and enjoyment. As there was threat of

dispossession and the authorities were harassing them, they were constrained to file W.P.No.15865 of 1986 and the same was allowed directing the authorities not to interfere with the peaceful possession of the petitioners without following the due process under law. Subsequent thereto, a notice under Section 7 of the A.P.Land Encroachment Act was served on the petitioners on 27.11.1996 and a detailed explanation was offered to the Mandal Revenue Officer stating that the possession of the lands by the petitioners is not of recent origin and they also established the fact that they have paid 16 times of land revenue and thus, got title to the land for the last about 40 years. In the light of the said explanation offered, the Mandal Revenue Officer, being satisfied, concluded that the possession of the lands is bonafide and they shall not be disturbed. The Mandal Revenue Officer also stated that there is no need to interfere with the peaceful possession and enjoyment of the petitioners and they shall be allowed to continue to have the said possession. Be that as it may, again proceedings were initiated to dispossess the petitioners for the purpose of assigning the said land by way of grant of pattas to the weaker sections in the village. The petitioners filed W.P.No.19771 of 1998. Similarly placed persons whose lands were also sought to be acquired for the purpose of grant of house site pattas to the weaker sections also approached this Court and filed W.P.No.15912 of 1999. As there were earlier orders by this Court not to dispossess the petitioners without following due process under law and also the Mandal Revenue Officer's findings that the petitioners shall not be dispossessed, a learned Single Judge of this Court by his order, dated 17.07.1998, disposed of the said writ petition at the stage of admission directing the respondents not to dispossess the petitioners except under due process of law. The

said order was communicated to the respondents telegraphically on 18.07.1998 and though the respondents have received the said telegraphic order on 18.07.1998 itself, because of the pressure given by the politicians and as the Minster was visiting their village, the respondents without honouring the said order dispossessed the petitioners from out of the said land and distributed pattas to the eligible beneficiaries and hence, they approached this Court and filed the present writ petition questioning the said action.

(3) Counter affidavit is filed on behalf of respondent Nos.1 and 2 stating that as the petitioners' possession is unauthorized and the right of the said land vests with the Government. The said land was sought to be acquired and the first petitioner also voluntarily consented to the said surrender and accordingly at the time when panchanama was drafted with regard to the delivery of possession he became a signatory to the said panchanama proceedings.

(4) Heard the learned counsel Mr.T.S.Anand and the learned Government Pleader.

(5) The petitioners in W.P.No.15912 of 1999 as stated supra, in fact approached this Court and filed the said writ petition only after unauthorisedly taking possession of their lands and distributing pattas. This Court having heard the counsel on either side and discussing various judgments of the Supreme Court etc., has held that the authorities cannot take law into their hands and even if a person's occupation is unauthorized he cannot be evicted without following due process under law and if such situation is brought to the notice of the Courts, the Courts are bound to direct the authorities to redeliver possession of the lands to the persons

dispossessed. Thus holding, the learned Judge directed the Mandal Revenue Officer to restore possession of the lands belonging to the petitioners within eight weeks from the date of the said order.

(6) Having heard the learned counsel on either side, it is clear that the said action on the part of the respondents is not only arbitrary, but also highhanded. When there was threat of dispossession, the petitioners approached this Court and filed writ petition as early as in the year 1986 and this Court specifically directed the respondents not to dispossess the petitioners without following due process under law. That means, even if the said occupation is really unauthorized then the minimum requirement on the part of the authorities is to issue a notice as provided for under the provisions of the A.P. Land Encroachment Act. Of course, in the instant case, the Mandal Revenue Officer issued a notice under Section 7 of the land Encroachment Act and when the petitioners offered their explanation, the Mandal Revenue Officer being satisfied with the same dropped all further proceedings and in fact, the Mandal Revenue Officer also dropped further action by his proceedings, dated 16.03.1997, holding that the possession of the applicants, petitioners herein, is not at all unlawful as they have paid 16 times land revenue and are having possession of the land since 38 years. Further in the said order, The Mandal Revenue Officer stated that the applicants, the petitioners herein have developed the lands with permanent cashew garden for their livelihood and continued to be in possession of the lands and the said possession be enjoyed by them with hereditable rights only. When once the Mandal Revenue Officer has given a clear finding on the proceedings initiated under the provisions of the Land Encroachment Act, it is not known as to how again the Mandal

Revenue Officer tried to interfere with the petitioners' possession and hence, the said action itself is wrong. Further when this Court had disposed of the writ petition No.19771 of 1998, on 17.01.1998 specifically directed the respondents not to dispossess the petitioners without following due process under law and the said order was communicated to the respondents telegraphically on 18.07.1998 itself and it is not known as to how they made the Minister to distribute pattas to the eligible beneficiaries as if the right of the said land vested with the Government. This also clearly establishes the malafide intention of the respondents.

(7) Of course, in the counter affidavit filed on behalf of the respondents it is stated that the land is belonging to the Government and located in scheduled area and as such, the Mandal Revenue Officer ought not to have given a finding that the petitioners' possession is over 38 years and they shall not be dispossessed. May be it is true, but even if the land is situated in scheduled area and the petitioners' possession is contrary to the A.P. Scheduled Areas Land Transfer Regulation, Regulation 1 of 1959, as amended by Regulation 1 of 1970, even then the only remedy to the revenue authorities is to refer the said matter to the Special Deputy Collector as provided under Section 3 of the said regulation to ascertain as to whether the said possession is lawful or unlawful. Without doing so and particularly, when there are directions by this Court in the year 1986 and 1998 to the effect that the petitioners shall not be dispossessed without following due process under law, the respondents have unauthorisedly took over possession of the lands and distributed the same by way of pattas to the eligible beneficiaries. All this is nothing but highhandedness.

(8) Accordingly while allowing the writ petition, the

respondents are hereby directed to restore possession of the lands in question to the petitioners forthwith. Of course, the beneficiaries in whose favour pattas were granted will definitely be put to loss and hence, the respondents are further directed to provide alternative pattas from out of the Government lands in the vicinity.

(9) Accordingly, this writ petition is allowed. No costs.

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JUSTICE GOPALA KRISHNA TAMADA

Date: 03.07.2007.
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